

Monday, February 13, 2023

TESTIMONY REGARDING HB 6659:
AN ACT CONCERNING THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2025, AND
MAKING APPROPRIATIONS THEREFOR.

To: Chair Cathy Osten, Chair Toni Walker, Vice Chair Joan Hartley, Vice Chair Tammy Exum, Vice
Chair Corey Paris, Ranking Member Eric Berthel, Ranking Member Tammy Nuccio, and
Distinguished Members of the Appropriations Committee

From: Attorney Tamar Rebecca Birkhead, Hartford, Connecticut

Re: HB 6659

In regard to HB 6659, I urge the General Assembly to INCREASE the budget line for Assigned
Counsel for the Division of Public Defender Services.

After graduating from Yale University and Harvard Law School, I have dedicated my 30 year legal
career to the representation of individuals on the margins of society, including children and
parents for whom the Department of Children and Families (DCF) has filed a petition for neglect,
abuse, or termination of parental rights AND indigent individuals charged with criminal offenses,
from minor misdemeanor to serious felonies, including murder.

The child welfare cases are difficult, time-intensive, and stressful ones, requiring a mastery of
the applicable statutory and case law as well as an understanding of each individual family's
vulnerabilities and strengths. Whether the child is an infant or an adolescent, their attorney
must identify their needs, advocate for their expressed interests, and coordinate with social
workers and other treatment providers to ensure that their young client is safe and secure in
their home. Representing parents is equally challenging, as the freedom to parent one's child is
among the most basic of human rights, and any diminishment of that right has reverberations
throughout one's lifetime.

Likewise, maintaining a strong defense bar in our criminal courts is essential to ensuring a
healthy criminal justice system. Defending low-income people charged with crimes requires a
commitment to representing people for whom society often has the least respect, and the
system is structured so that criminal defense attorneys are always at a disadvantage in terms of
available resources, high caseloads, and the biases of fact finders.

As defined by the American Bar Association, "compassion fatigue is the cumulative physical,
emotional and psychological effect of exposure to traumatic stories or events when working in a
helping capacity," including as a legal advocate. Compassion fatigue (or vicarious or secondary
trauma) may be distinguished from burnout, which is often predictable, builds over time, and
results in work dissatisfaction. In contrast, compassion fatigue is a sudden response to work
that is emotionally stressful and characterized by a lack of resources and excessive hours; it
occurs when these triggers and traumatic experiences start to affect and then overwhelm your
thoughts, moods, and well-being outside of work.

Many appointed counsel, whether in child protection court, juvenile delinquency court, or adult criminal court, are solo practitioners or members of small firms in which there is limited administrative support and where large caseloads and frequent travel across the state to courthouses; jails and prisons; and clients' homes, schools and treatment facilities are common.

I practice as appointed counsel in the Middletown and New Haven Superior Courts for Juvenile Matters. Over the past three years, many appointed counsel in these courts have cancelled their contracts to take positions with the Attorney General's Office, DCF, or have left the practice altogether as a result of the stressors of the work combined with the inadequate compensation offered by the state. Often the new attorneys who are added to these panels have little experience—if any—in child protection court, and the remaining lawyers, such as myself, find themselves serving as unofficial (and unpaid) mentors and counselors, further adding to the responsibilities of the job.

As a Special Public Defender, I practice in the GA in New London and Part A in the superior courts of New London, Tolland, and Torrington. I also am on the appointed panel for criminal appeals, habeas corpus cases, and as a Guardian Ad Litem. Over the past three years, many appointed counsel on these panels have cancelled their state contracts to focus only on private criminal cases or on other areas of law as a result of the inadequate compensation offered by the state. This results in excessive caseloads for the Special Public Defenders who remain, which compromises the quality of representation for our state's most vulnerable citizens.

In order to sustain this critically important work, there must be an increase in the flat rate payments currently offered by the state (\$500 for child welfare cases; \$400 for GA criminal cases; and \$1000 for Part A criminal cases). On top of the flat rate, appointed counsel may receive \$65/hour for child welfare cases or \$75/hour for Part A cases for a narrow set of tasks. In short, given that many of these cases require 20-40 hours from beginning until end, I am earning an average of \$25-\$35/hour, an unsustainable wage for any attorney, particularly one with 30+ years of experience.

Those of us who do this work are clearly not motivated by the accumulation of wealth, prestige or newspaper headlines. We do it because it is critical to ensuring that individuals on the margins, most of whom are living in poverty and/or are struggling with mental illness or drug/alcohol addiction, receive effective assistance of counsel to protect their Constitutional rights to parent, to be safe and secure in their homes as children, or to liberty and justice as criminal defendants. As their lawyers, we deserve to be adequately compensated.

For all of these reasons, in regard to HB 6659, I urge the General Assembly to INCREASE the budget line for Assigned Counsel for the Division of Public Defender Services.

Thank you for the opportunity to share my views and experiences relevant to the budget for the biennium ending June 30, 2025.

Tamar R. Birkhead

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